

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220710746  
N. RAMIREZ )  
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**OPINION**

Representing the Parties:

For Appellant: N. Ramirez  
For Respondent: Josh Ricafort, Tax Counsel

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Ramirez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,553 for the 2021 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellant is entitled to the Earned Income Tax Credit (EITC).

**FACTUAL FINDINGS**

1. Appellant timely filed a 2021 California Resident Income Tax Return (return), claiming an EITC and corresponding overpayment/refund in the amount of \$1,553. Attached to appellant’s return was a copy of a 2021 Form 1099-NEC (*Nonemployee Compensation*) (2021 Form 1099-NEC) issued to appellant from a business named “Riverside Enterprises,” with an address in Riverside, California. The 2021 Form 1099-NEC purportedly reported nonemployee compensation paid by Riverside Enterprises to appellant.

2. Appellant reported California adjusted gross income, which allegedly consisted entirely of nonemployee compensation from Riverside Enterprises. Appellant treated the reported adjusted gross income as earned income.
3. FTB processed the return and requested additional information from appellant to verify that she qualified for the EITC.
4. In response, appellant provided documentation, which included another copy of the 2021 Form 1099-NEC.
5. FTB denied appellant's claimed EITC because of insufficient information.
6. Appellant appealed to the Office of Tax Appeals (OTA). Subsequently, appellant provided additional documentation including a different version of the 2021 Form 1099-NEC from Riverside Enterprises and receipts from Riverside Enterprises for payments in 2021 for washing and cleaning trailers.
7. While this appeal was pending, FTB attempted to phone appellant to request supporting documentation. Because the voice mailbox it reached was full, FTB could not leave a message for appellant.
8. Subsequently, by correspondence to appellant, FTB explained that the federal taxpayer identification number listed on the submitted 2021 Form 1099-NEC did not belong to a business named "Riverside Enterprises." Further, FTB asserted that appellant submitted two different 2021 Forms 1099-NEC from Riverside Enterprises and it is unclear which is the actual 2021 Form 1099-NEC that Riverside Enterprises issued to appellant. FTB requested the following documentation to support appellant's position that she received earned income in 2021:
  - a. A copy of the original 2021 Form 1099-NEC that Riverside Enterprises issued to appellant;
  - b. A letter written on letterhead and signed under penalty of perjury by an officer or owner of Riverside Enterprises (i) confirming that appellant earned income in 2021 for washing and cleaning trailers, (ii) identifying the location where appellant provided her services, (iii) providing the officer or owner's full name, physical address, and telephone number, and (iv) including a schedule of the dates when appellant's services were provided and a copy of IRS correspondence assigning the federal taxpayer identification number listed on the 2021

- Form 1099-NEC to Riverside Enterprises (or an explanation and supporting documentation for the discrepancy);
- c. All paystubs/invoices issued to appellant by Riverside Enterprises; and
  - d. Appellant’s monthly bank statements for 2021 reflecting payments received from Riverside Enterprises.
9. According to FTB, it subsequently received a call from, and spoke with, appellant’s tax preparer, but did not receive any of the requested documents.

### DISCUSSION

The California EITC is based on the federal EITC (codified at Internal Revenue Code (IRC) section 32) with some modifications. (R&TC, § 17052.) R&TC section 17025(a)(1) allows the California EITC against the net tax (as defined in R&TC section 17039) in an amount relating to earned income. Thus, to qualify for the EITC, a taxpayer must have earned income. (See R&TC, § 17052(a)(1); IRC, § 32(a)(1).) The term “earned income” means wages, salaries, tips, and other employee compensation includible in gross income for the taxable year and, for California purposes, only if such amounts are subject to withholding pursuant to Division 6 (commencing with section 13000) of the California Unemployment Insurance Code for the taxable year, plus the amount of a taxpayer’s net earnings from self-employment for the tax year. (R&TC, § 17052(c)(4); IRC, § 32(c)(2)(A).) The term “net earnings from self-employment” means the gross income derived by an individual from any trade or business carried on by such individual less the allowable deductions attributable to such trade or business. (IRC, § 1402(a).)

Tax credits are a matter of legislative grace, and taxpayers bear the burden of proving they are entitled to claimed tax credits. (*Appeal of Swat-Fame, Inc., et al.*, 2020-OTA-046P.) Regarding issues of fact, unless the law provides otherwise, appellant has the burden of proof, which requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a) & (c).) To meet this evidentiary standard, a taxpayer must establish that the circumstances he or she asserts are more likely than not to be correct. (*Appeal of Belcher*, 2021-OTA-284P.)

On appeal, appellant contends that she provided all the necessary documents to prove she was entitled to the EITC. With her opening brief, appellant attached a version of the 2021 Form 1099-NEC issued to her by Riverside Enterprises, which is identical to the one attached to her return. Subsequently, appellant submitted to OTA numerous documents, including a

different version of the 2021 Form 1099-NEC from Riverside Enterprises and receipts from Riverside Enterprises for payments in 2021 for washing and cleaning trailers.

In response, FTB acknowledges that appellant’s federal wage and income transcript shows the information appellant provided on the 2021 Form 1099-NEC but contends that it is still unable to verify that appellant received earned income for the 2021 tax year for several reasons. First, the federal taxpayer identification number on the 2021 Form 1099-NEC provided by appellant belongs to a business entity in Cincinnati, Ohio, rather than Riverside Enterprises. Second, the California Secretary of State’s records did not list an active business named “Riverside Enterprises;” the closest match was an LLC with an address in Northern California. Third, FTB has no record of a business named “Riverside Enterprises” filing a return that reported income, expenses (including non-employee expenses), or any tax liability. In its brief, FTB reiterates its request to appellant for additional evidence to substantiate that appellant earned the income she reported for the 2021 tax year.<sup>1</sup>

OTA has reviewed the record and finds no evidence either resolving the discrepancies identified by FTB with respect to the 2021 Form 1099-NEC purportedly issued by Riverside Enterprises or corroborating appellant’s assertion that the amounts reported as adjusted gross income on her return qualified as earned income. Appellant also has not responded to FTB’s requests to provide evidence that would clarify the matter or support her assertions. Accordingly, OTA concludes that appellant has not carried her burden of proving she is entitled to the EITC.

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<sup>1</sup> Appellant has not informed OTA that she has any additional evidence to support her position on appeal.

HOLDING

Appellant is not entitled to the EITC.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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Andrew Wong  
Administrative Law Judge

Date Issued: 6/5/2023